

SENATE BILL 384

J3

11r1787
CF HB 346

By: **Senator Mathias**

Introduced and read first time: February 3, 2011

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 23, 2011

CHAPTER _____

1 AN ACT concerning

2 **Health – State Facilities and Residential Centers – Definition of Abuse and**
3 **~~Required Guidelines for Employees~~**

4 FOR the purpose of altering certain definitions of “abuse” for purposes of certain
5 reporting requirements by specifying that “abuse” does not include certain
6 actions ~~taken by certain employees; requiring the Department of Health and~~
7 ~~Mental Hygiene to develop certain guidelines in consultation with certain~~
8 ~~employee organizations and to provide training on implementation of the~~
9 ~~guidelines to certain employees; requiring the Department to report to certain~~
10 ~~committees of the General Assembly on or before a certain date; requiring the~~
11 ~~Department to complete implementation of certain guidelines on or before a~~
12 ~~certain date~~ that comply with certain State and federal laws and certain
13 Department policies; and generally relating to State facilities and residential
14 centers.

15 BY repealing and reenacting, with amendments,
16 Article – Health – General
17 Section 7–1005 and 10–705
18 Annotated Code of Maryland
19 (2009 Replacement Volume and 2010 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article – Health – General**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 7-1005.

2 (a) (1) In this section, "abuse" means:

3 (i) Any physical injury that is inflicted willfully or with gross
4 recklessness;

5 (ii) Inhumane treatment; or

6 (iii) Any of the following kinds of sexual abuse:

7 1. A sexual act, as defined in § 3-301 of the Criminal
8 Law Article;

9 2. Sexual contact, as defined in § 3-301 of the Criminal
10 Law Article; or

11 3. Vaginal intercourse, as defined in § 3-301 of the
12 Criminal Law Article.

13 (2) In this section, "abuse" does not include:

14 (I) [the] **THE** performance of:

15 [(i)] 1. An accepted medical procedure that a physician
16 orders; [or]

17 [(ii)] 2. An accepted behavioral procedure that a licensed
18 psychologist or psychiatrist, as appropriate, orders; **OR**

19 (II) ~~**APPROPRIATE ACTIONS TAKEN BY AN EMPLOYEE OF A**~~
20 ~~**STATE RESIDENTIAL CENTER TO PROTECT THE EMPLOYEE OR OTHER**~~
21 ~~**INDIVIDUALS IN THE RESIDENTIAL CENTER THAT INVOLVE THE LEAST AMOUNT**~~
22 ~~**OF RESTRICTION REQUIRED TO PROVIDE THE NECESSARY PROTECTION AN**~~
23 ~~**ACTION TAKEN BY AN EMPLOYEE THAT COMPLIES WITH APPLICABLE STATE**~~
24 ~~**AND FEDERAL LAWS AND APPLICABLE DEPARTMENT POLICIES ON THE USE OF**~~
25 ~~**PHYSICAL INTERVENTION.**~~

26 (b) (1) In addition to any other reporting requirement of law, a person
27 who believes that an individual with developmental disability has been abused
28 promptly shall report the alleged abuse to the executive officer or administrative head
29 of the licensee.

30 (2) The executive officer or administrative head shall report the
31 alleged abuse to an appropriate law-enforcement agency.

1 (3) A report to the executive officer or administrative head:
2 (i) May be oral or written; and
3 (ii) Shall contain as much information as the reporter is able to
4 provide.

5 (c) (1) The law–enforcement agency shall:

6 (i) Investigate thoroughly each report of an alleged abuse; and

7 (ii) Attempt to ensure the protection of the alleged victim.

8 (2) The investigation shall include:

9 (i) A determination of the nature, extent, and cause of the
10 abuse;

11 (ii) The identity of the alleged abuser or abusers; and

12 (iii) Any other pertinent fact or matter.

13 (d) As soon as possible, but no later than 10 working days after the
14 completion of the investigation, the law–enforcement agency shall submit a written
15 report of its findings to the State’s Attorney, the Director, the State–designated
16 protection and advocacy agency, and the executive officer or administrative head of the
17 licensee.

18 (e) The Administration shall maintain a central registry of abuse reports and
19 their disposition and shall take appropriate remedial action.

20 (f) A person shall have the immunity from liability described under § 5–625
21 of the Courts and Judicial Proceedings Article for:

22 (1) Making a report under this section;

23 (2) Participating in an investigation arising out of a report under this
24 section; or

25 (3) Participating in a judicial proceeding arising out of a report under
26 this section.

27 10–705.

28 (a) (1) In this section, “abuse” means cruel or inhumane treatment that
29 causes:

- 1 (i) Any physical injury; or
- 2 (ii) Any of the following kinds of sexual abuse:
- 3 1. A sexual act, as defined in § 3–301 of the Criminal
4 Law Article.
- 5 2. Sexual contact, as defined in § 3–301 of the Criminal
6 Law Article.
- 7 3. Vaginal intercourse, as defined in § 3–301 of the
8 Criminal Law Article.

9 (2) In this section, “abuse” does not include:

10 (I) [the] **THE** performance of an accepted medical procedure
11 that a physician orders in a manner that is consistent with the provisions of this
12 subtitle; **OR**

13 (II) ~~APPROPRIATE ACTIONS TAKEN BY AN EMPLOYEE OF A~~
14 ~~STATE FACILITY TO PROTECT THE EMPLOYEE OR OTHER INDIVIDUALS IN THE~~
15 ~~FACILITY THAT INVOLVE THE LEAST AMOUNT OF RESTRICTION REQUIRED TO~~
16 ~~PROVIDE THE NECESSARY PROTECTION~~ AN ACTION TAKEN BY AN EMPLOYEE
17 THAT COMPLIES WITH APPLICABLE STATE AND FEDERAL LAWS AND
18 APPLICABLE DEPARTMENT POLICIES ON THE USE OF PHYSICAL INTERVENTION.

19 (b) (1) A person who believes that an individual in a facility has been
20 abused shall promptly report the alleged abuse to:

- 21 (i) An appropriate law enforcement agency; or
- 22 (ii) The administrative head of the facility, who promptly shall
23 report the alleged abuse to an appropriate law enforcement agency.

24 (2) A report:

- 25 (i) May be oral or written; and
- 26 (ii) Shall contain as much information as the reporter is able to
27 provide.

28 (c) (1) The law enforcement agency shall:

- 29 (i) Investigate thoroughly each report of an alleged abuse; and

- 1 (ii) Attempt to insure the protection of the alleged victim.
- 2 (2) The investigation shall include:
- 3 (i) A determination of the nature, extent, and cause of the
4 abuse, if any;
- 5 (ii) The identity of the alleged abuser; and
- 6 (iii) Any other pertinent fact or matter.

7 (d) As soon as possible, but no later than 10 working days after the
8 completion of the investigation, the law enforcement agency shall submit a written
9 report of its findings to the State's Attorney and the administrative head of the
10 facility.

11 (e) A person shall have the immunity from liability described under § 5-626
12 of the Courts and Judicial Proceedings Article for:

- 13 (1) Making a report under this section;
- 14 (2) Participating in an investigation arising out of a report under this
15 section; or
- 16 (3) Participating in a judicial proceeding arising out of a report under
17 this section.

18 ~~SECTION 2. AND BE IT FURTHER ENACTED, That the Department of~~
19 ~~Health and Mental Hygiene:~~

20 ~~(1) (i) shall develop guidelines regarding appropriate methods of~~
21 ~~protection and restraint to be used by employees of State facilities under the Mental~~
22 ~~Hygiene Administration and State residential centers under the Developmental~~
23 ~~Disabilities Administration, in consultation with employee organizations that~~
24 ~~represent the employees; and~~

25 ~~(ii) shall provide training to the employees on implementation of~~
26 ~~the guidelines;~~

27 ~~(2) on or before September 1, 2011, shall report to the Senate Finance~~
28 ~~Committee and the House Health and Government Operations Committee, in~~
29 ~~accordance with § 2-1246 of the State Government Article, on the progress made in~~
30 ~~developing and implementing the guidelines; and~~

31 ~~(3) on or before December 31, 2011, shall complete implementation of~~
32 ~~the guidelines.~~

1 SECTION ~~3~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect July 1, 2011.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.